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Attorneys for Defendant
 JOHN J. COTA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

 JOHN J. COTA,

 Defendant.

Case No. CR 08-0160 SI

**DEFENDANT JOHN J. COTA'S NOTICE
 OF MOTION AND MOTION TO DISMISS
 FALSE STATEMENT CHARGES**

Date: July 18, 2008
 Time: 11:00 a.m.
 Judge: Honorable Susan Illston

Speedy Trial Act; Excludable Time Through
 Disposition, 18 U.S.C. § 3161 (h)(1)(F)

TO UNITED STATES ATTORNEY JOSEPH P. RUSSONIELLO:

PLEASE TAKE NOTICE that at 11:00 a.m. on July 18, 2008 or as soon thereafter as
 counsel may be heard in the above entitled Court, Defendant JOHN J. COTA ("Captain Cota") will
 and hereby does move this Court for an order dismissing Counts One and Two of the Superseding

1 Indictment in this matter pursuant to Rule 12(b)(2) and (3) of the Federal Rules of Criminal
 2 Procedure. Specifically, Captain Cota seeks dismissal based on the grounds that the charges lack the
 3 required elements under 18 U.S.C. Section 1001 because: (a) the alleged false statements were not
 4 made within the jurisdiction of the executive, legislative or judiciary branch of the government of the
 5 United States, (b) it violates the *Ex Post Facto* Clause of the Constitution to prosecute the alleged
 6 2006 and 2007 false statements, (c) the alleged false statements were not material, and (d) the
 7 questions which led to the allegedly false statements were fundamentally ambiguous nor was there
 8 any notice given that the communications at issue were subject to Section 1001, thereby negating
 9 any willful and knowing intent. Therefore, Counts One and Two are legally deficient and should be
 10 dismissed without leave to amend.

11 This motion is based on this Notice of Motion and Motion, the attached Memorandum of
 12 Points and Authorities and exhibits in support thereof, the complete files and records in this matter,
 13 and upon such other matters as may be presented to the Court at the time of the hearing.

14 Respectfully submitted,

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 16 DATED: June 13, 2008.

KIRKPATRICK & LOCKHART
 PRESTON GATES ELLIS LLP

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 19 By: /s/ Jeffrey L. Bornstein

20 Jeffrey L. Bornstein, Esq.
 21 Barry M. Hartman, Esq., *Admitted Pro Hac Vice*
 22 Luke G. Anderson Esq.
 Christopher R. Tate, Esq., *Pro Hac Vice pending*

23 Attorneys for Defendant
 JOHN J. COTA